

<p>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address</p> <p>MARJORIE M JOHNSON, CSB # 146540 MARJORIE M JOHNSON P.O. BOX 1149 RIVERSIDE, CA 92502 TELEPHONE: 951-778-9878 FAX: 951-750-6497 MMJESQ@YAHOO.COM</p> <p><input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Movant</p>		<p>FOR COURT USE ONLY</p>	
<p>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION</p>			
<p>In re: JONATHAN LEE SMITH AKA: JON SMITH</p> <p>Debtor(s).</p>		<p>CASE NO.: 2:21-BK-12542-BR CHAPTER: 7</p>	
		<p>NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (with supporting declarations) (PERSONAL PROPERTY)</p>	
		<p>DATE: 03/01/2022 TIME: 10:00 a.m. COURTROOM: 1668</p>	
<p>Movant: Capital One Auto Finance, a division of Capital One, N.A.</p>			

1. Hearing Location:

- ☒ 255 East Temple Street, Los Angeles, CA 90012
☐ 21041 Burbank Boulevard, Woodland Hills, CA 91367
☐ 3420 Twelfth Street, Riverside, CA 92501
- ☐ 411 West Fourth Street, Santa Ana, CA 92701
☐ 1415 State Street, Santa Barbara, CA 93101
2. Notice is given to the Debtor and trustee (if any)(Responding Parties), their attorneys (if any), and other interested parties that on the date and time and in the courtroom stated above, Movant will request that this court enter an order granting relief from the automatic stay, as to Debtor and Debtor's bankruptcy estate on the grounds set forth in the attached motion.
3. To file a response to the motion, you may obtain an approved court form at www.cacb.uscourts.gov/forms for use in preparing your response (optional LBR form F 4001-1.RFS.RESPONSE), or you may prepare your response using the format required by LBR 9004-1 and the Court Manual.

- 4 When serving a response to the motion, serve a copy of it upon the Movant's attorney (or upon Movant, if the motion was filed by an unrepresented individual) at the address set forth above
- 5 If you fail to timely file and serve a written response to the motion, or fail to appear at the hearing, the court may deem such failure as consent to granting of the motion
- 6 ☒ This motion is being heard on REGULAR NOTICE pursuant to LBR 9013-1(d) If you wish to oppose this motion, you must file a written response to this motion with the court and serve a copy of it upon the Movant's attorney (or upon Movant, if the motion was filed by an unrepresented individual) at the address set forth above no less than 14 days before the hearing and appear at the hearing of this motion
- 7 ☐ This motion is being heard on SHORTENED NOTICE pursuant to LBR 9075-1(b) If you wish to oppose this motion, you must file and serve a response no later than (date) _____ and (time) _____, and, you may appear at the hearing
- a ☐ An application for order setting hearing on shortened notice was not required (according to the calendaring procedures of the assigned judge)
- b ☐ An application for order setting hearing on shortened notice was filed and was granted by the court and such motion and order have been or are being served upon the Debtor and upon the trustee (if any)
- c ☐ An application for order setting hearing on shortened notice and remains pending After the court has ruled on that application, you will be served with another notice or an order that will specify the date, time and place of the hearing on the attached motion and the deadline for filing and serving a written opposition to the motion

Date 01/26/2022

MARJORIE M JOHNSON

Printed name of law firm (if applicable)

MARJORIE M JOHNSON

Printed name of individual Movant or attorney for Movant

/s/ MARJORIE M JOHNSON

Signature of individual Movant or attorney for Movant

MOTION FOR RELIEF FROM THE AUTOMATIC STAY AS TO PERSONAL PROPERTY

1 Movant has a perfected security interest in the Property

2 **The Property at Issue (Property):**

a ☒ Vehicle (*year, manufacturer, type, and model*) 2011 BMW X5 xDrive35i Premium Sport Utility 4D

Vehicle Identification Number 5UXZV4C52BL403713

Location of vehicle (if known) Impounded

b ☐ Equipment (*manufacturer, type, and characteristics*)

Serial number(s)

Location (if known)

c ☐ Other Personal Property (*type, identifying information, and location*)

3 **Bankruptcy Case History:**

a ☒ A voluntary bankruptcy petition ☐ An involuntary bankruptcy petition
under chapter ☒ 7 ☐ 11 ☐ 12 ☐ 13 was filed on (*date*) 03/30/2021

b ☐ An order to convert this case to chapter ☐ 7 ☐ 11 ☐ 12 ☐ 13 was entered on (*date*) _____

c ☐ Plan was confirmed on (*date*) _____

4 **Grounds for Relief from Stay:**

a ☒ Pursuant to 11 U.S.C. § 362(d)(1), cause exists to grant Movant the requested relief from stay as follows

(1) ☒ Movant's interest in the Property is not adequately protected

(A) ☐ Movant's interest in the Property is not protected by an adequate equity cushion

(B) ☒ The fair market value of the Property is declining and payments are not being made to Movant sufficient to protect Movant's interest against that decline

(C) ☒ Proof of insurance regarding the Property has not been provided to Movant, despite the Debtor's obligation to insure the collateral under the terms of Movant's contract with Debtor

(D) ☐ Other (*see attached continuation page*)

(2) ☐ The bankruptcy case was filed in bad faith

(A) ☐ Movant is the only creditor, or one of very few creditors, listed or scheduled in the Debtor's case commencement documents

- (B) ☐ The Property was transferred to the Debtor either just before the bankruptcy filing or after the filing
- (C) ☐ A non-individual entity was created just prior to the bankruptcy petition date for the sole purpose of filing this bankruptcy case
- (D) ☐ Other bankruptcy cases were filed in which an interest in the Property was asserted
- (E) ☐ The Debtor filed only a few case commencement documents with the bankruptcy petition Schedules and statement of financial affairs (or chapter 13 plan, if appropriate) have not been filed

(3) ☐ (*Chapter 12 or 13 cases only*) All payments on account of the Property are being made through the plan and plan payments have not been made to the chapter 12 or chapter 13 trustee for payments due
☐ postpetition preconfirmation ☐ postpetition postconfirmation

(4) ☐ The lease has matured, been rejected or deemed rejected by operation of law

(5) ☒ The Debtor filed a statement of intention that indicates the Debtor intends to surrender the Property

(6) ☐ Movant regained possession of the Property on (date) _____, which is
☐ prepetition ☐ postpetition

(7) ☒ For other cause for relief from stay, see attached continuation page

b ☐ Pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Property, and, pursuant to 11 U.S.C. § 362(d)(2)(B), the Property is not necessary for an effective reorganization

5 Grounds for Annulment of the Stay. Movant took postpetition actions against the Property or the Debtor

- a ☐ These actions were taken before Movant knew that the bankruptcy petition had been filed and Movant would have been entitled to relief from stay to proceed with those actions,
- b ☐ Movant knew the bankruptcy case had been filed, but Movant previously obtained relief from stay to proceed with these enforcement actions,
- c ☐ Other (*specify*)

6 ☒ Evidence in Support of Motion: (*Declaration(s) must be signed under penalty of perjury and attached to this motion*)

- a The PERSONAL PROPERTY DECLARATION on page 6 of this motion
- b ☐ Supplemental declaration(s)
- c ☐ The statements made by the Debtor under penalty of perjury concerning Movant's claims and the Property as set forth in the Debtor's case commencement documents. Authenticated copies of the relevant portions of the case commencement documents are attached as Exhibit(s) _____
- d ☐ Other

7 An optional Memorandum of Points and Authorities is attached to this motion.

Movant requests the following relief:

- 1 Relief from the stay is granted under ☒ 11 U S C § 362(d)(1) ☐ 11 U S C § 362(d)(2)
- 2 ☒ Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the Property
- 3 ☐ Confirmation that there is no stay in effect
- 4 ☐ The stay is annulled retroactive to the petition date Any postpetition actions taken by Movant to enforce its remedies regarding the Property do not constitute a violation of the stay
- 5 ☐ The co-debtor stay of 11 U S C § 1201(a) or § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the Debtor
- 6 ☒ The 14-day stay prescribed by FRBP 4001(a)(3) is waived
- 7 ☐ The order is binding in any other bankruptcy case purporting to affect the Property filed not later than 2 years after the date of entry of such order, except that a debtor in a subsequent case may move for relief from the order based upon changed circumstances or for good cause shown, after notice and hearing
- 8 ☐ The order is binding and effective in any bankruptcy case commenced by or against the Debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the Property
- 9 ☐ The order is binding and effective in any bankruptcy case commenced by or against any debtor who claims any interest in the Property for a period of 180 days, so that no further stay shall arise in that case as to the Property
- 10 ☐ The order is binding and effective in any future bankruptcy case, no matter who the debtor may be
☐ without further notice, or ☐ upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law
- 11 ☐ If relief from stay is not granted, the court orders adequate protection
- 12 ☐ See continuation page for other relief requested

Date 01/26/2022

MARJORIE M JOHNSON

Print name of law firm

MARJORIE M JOHNSON

Print name of individual Movant or attorney for Movant

/s/ MARJORIE M JOHNSON

Signature of individual Movant or attorney for Movant

**SUPPLEMENT TO MANDATORY FORM, F 4001-1.RFS.PP.MOTION, MOTION FOR
RELIEF FROM THE AUTOMATIC STAY AS TO PERSONAL PROPERTY LINE
4(A)(7), AS PERMITTED BY LBR 9009-1(B)(4)(B)**

The Collateral was impounded on December 21, 2021 (See Exhibit 4).

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding My business address is
P O BOX 1149, RIVERSIDE, CA 92502

A true and correct copy of the foregoing document entitled **NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (with supporting declarations) (PERSONAL PROPERTY)** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d), and (b) in the manner stated below

1 TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF) Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document On (date) 01/26/2022, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL

On (date) 01/26/2022, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served) Pursuant to F R Civ P 5 and/or controlling LBR, on (date) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct

01/26/2022
Date

Gloria Yeager
Printed Name

/s/ Gloria Yeager
Signature

ATTACHMENT "SERVICE LIST"

TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

Tanya Behnam - tbehnam@polsinelli.com, tanyabehnam@gmail.com; ccripe@polsinelli.com; ladocketing@polsinelli.com

Nathaniel DeLoatch - nathan.deloatch@troutman.com

Luke N Eaton - eatonl@pepperlaw.com, jacqueline.sims@troutman.com

Howard M Ehrenberg (TR) - ehrenbergtrustee@sulmeyerlaw.com, ca25@ecfcbis.com; C123@ecfcbis.com; hehrenberg@ecf.inforuptcy.com

Philip A Gasteier - pag@lnbrb.com

David M. Guess - guessd@gtlaw.com

Eve H. Karasik - ehk@lnbyb.com

Mark J Markus - bklawr@bklaw.com, markjmarkus@gmail.com

Aditi Paranjpye - aparanjpye@cairncross.com, eroth@cairncross.com; AParanjpye@ecf.courtdrive.com

Faye C Rasch - frasch@wgllp.com, kadele@wgllp.com; lbracken@wgllp.com; gestrada@wgllp.com

Arvind Nath Rawal - arawal@aisinfo.com

United States Trustee (LA) - ustpregion16.la.ecf@usdoj.gov

Christopher P Walker - cwalker@cpwalkerlaw.com, lhines@cpwalkerlaw.com; r57253@notify.bestcase.com

SERVED BY UNITED STATES MAIL:

DEBTOR

Jonathan Lee Smith
506 N. Croft Avenue
Los Angeles, CA 90048
By First Class Mail

PRESIDING JUDGE'S COPY:

Judge Barry Russell
Edward R. Roybal Federal Building and
Courthouse
255 E. Temple Street, Suite 1660
Los Angeles, CA 90012
By First Class Mail

SPECIAL NOTICE LIST:

Luke Eaton

Two California Plaza
350 South Grand Avenue
Suite 3400
Los Angeles, CA 90071
By First Class Mail

Kristofer Larson

999 N Northlake way Suite 213
Seattle, WA 98103
By First Class Mail

Alexandra Peurach

Troutman Pepper Hamilton Sanders LLP
600 Peachtree St. NE
Suite 3000
Atlanta, GA 30308
By First Class Mail

Harris Winsberg

Troutman Pepper Hamilton Sanders, LLP
600 Peachtree St NE
Suite 3000
Atlanta, GA 30308
By First Class Mail